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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PING JIANG,) No. C 07-3909 CRB
Plaintiff,)
v.)
MICHAEL CHERTOFF, Secretary,) ANSWER TO COMPLAINT
Department of Homeland Security;)
ROBERT S. MUELLER, Director of the)
Federal Bureau of Investigation,)
Defendants.)

The Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of Mandamus.

1. Paragraph One consists of Plaintiff's characterization of this action for which no answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny that they have improperly withheld action on Plaintiff's application to his detriment.

PARTIES

2. Defendants admit the allegations in Paragraph Two.
 3. Defendants admit the allegations in Paragraph Three.
 4. Defendants admit the first sentence and deny the second sentence in Paragraph Four.

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ANSWER
07-3909 CRB

JURISDICTION

5. Paragraph Five consists of plaintiff's allegations regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny that this Court has jurisdiction under any of the provisions cited in Paragraph Five.

VENUE

6. Paragraph Six consists of plaintiff's allegations regarding venue, to which no responsive pleading is required. Defendants aver that unless specifically provided by law, aliens have no residence in the United States for venue purposes. To the extent a response is required, Defendants deny that venue is proper in this district.

EXHAUSTION OF REMEDIES

7. Defendants deny that Plaintiff exhausted his administrative remedies.

CAUSE OF ACTION

8. Defendants admit the allegations in Paragraph Eight.

9. Defendants admit the allegations in Paragraph Twelve; however, the information available to the public regarding processing times pertains to routine cases, not cases with pending name checks.

10. Defendants deny the allegations in Paragraph Ten.

11. Defendants deny the allegations in Paragraph Eleven.

11a). Defendants deny the allegations in Paragraph Eleven subsection a.

11b). Defendants deny the allegations in Paragraph Eleven subsection b. Defendants aver that the American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. 106-313 permits an alien worker to adjust status based on employment with a different employer than the company that filed the I-140 visa petition, if the job duties of the new employment are the same or similar to the occupational classification certified by the Department of Labor.

11c). Defendants deny the allegations in Paragraph Eleven subsection c.

12. Defendants deny the allegations in Paragraph Twelve.

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PRAAYER

13. Paragraph Thirteen consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

AFFIRMATIVE AND/OR OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified are hereby denied.
For further and separate answer, Defendants allege as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

SECOND DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

FOURTH DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

FIFTH DEFENSE

The Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

SIXTH DEFENSE

Venue is improper in this district.

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1 WHEREFORE, Defendants pray for relief as follows:

2 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's
3 Complaint with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief
4 as it deems just and proper under the circumstances.

5 Dated: October 2, 2007

Respectfully submitted,

6 SCOTT N. SCHOOLS
7 United States Attorney

8 _____/s/
9 MELANIE L. PROCTOR
10 Assistant United States Attorney
11 Attorneys for Defendants